

Amendment No. 1 to HB1369

Lundberg  
Signature of Sponsor

**AMEND Senate Bill No. 1393\***

**House Bill No. 1369**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-1-102(1)(A)(iv), is amended by deleting the language "; or" at the end of the subdivision and substituting instead the following:

. If the four-month period immediately preceding the institution of the action or the four-month period immediately preceding such parent's incarceration is interrupted by a period or periods of incarceration, and there are not four (4) consecutive months without incarceration immediately preceding either event, a four-month period shall be created by aggregating the shorter periods of non-incarceration beginning with the most recent period of non-incarceration prior to commencement of the action and moving back in time. Periods of incarceration of less than seven (7) days duration shall be counted as periods of non-incarceration. Periods of incarceration not discovered by the petitioner and concealed, denied, or forgotten by the parent shall also be counted as periods of non-incarceration. A finding that the parent has abandoned the child for a defined period in excess of four (4) months that would necessarily include the four (4) months of non-incarceration immediately prior to the institution of the action, but which does not precisely define the relevant four-month period, shall be sufficient to establish abandonment; or

SECTION 2. Tennessee Code Annotated, Section 36-1-102, is amended by adding the following as a new subdivision:

( ) "Physical custody" means physical possession and care of a child. "Physical custody" may be constructive, as when a child is placed by agreement or court order

Amendment No. 1 to HB1369

Lundberg  
Signature of Sponsor

**AMEND Senate Bill No. 1393\***

**House Bill No. 1369**

with an agency, or purely physical, as when any family, including a formal or informal foster family, has possession and care of a child, so long as such possession was not secured through a criminal act. An agency and a family may have physical custody of the same child at the same time;

SECTION 3. Tennessee Code Annotated, Section 36-1-111(a)(1), is amended by deleting the word "may" and substituting instead the word "shall".

SECTION 4. Tennessee Code Annotated, Section 36-1-111(r)(1)(A)(i), is amended by deleting the second sentence of the subdivision and substituting instead the following:

It shall terminate the responsibilities of the surrendering parent or guardian and the consenting parent. It shall terminate the responsibilities of the person executing a waiver of interest under this section for future child support or other future financial responsibilities pursuant to subsection (w) if the child is ultimately adopted; provided, that this shall not eliminate the responsibility of such parent or guardian for past child support arrearages or other financial obligations incurred for the care of such child prior to the execution of the surrender, parental consent, or waiver of interest; provided further, that the court may, with the consent of the parent or guardian, restore such rights and responsibilities, pursuant to § 36-1-118(d).

SECTION 5. Tennessee Code Annotated, Section 36-1-111, is amended by adding a new subsection (x) as follows and redesignating the existing subsection (x) and subsequent subsections:

(x)

(1) Notwithstanding any other law to the contrary, a denial of paternity and notice of a child, when signed under oath by the child's legal father claiming not to be the child's biological father, who is not the child's adoptive father, and when accompanied by credible proof that the legal father is not the father of the child, shall waive the legal father's parental rights and all parental interests with respect to the child. No further notice to the legal father or termination of the legal father's parental rights is necessary for the child to be placed in guardianship or adopted. "Credible proof" includes the written sworn statement of the child's mother.

(2) The parental rights of a man denying paternity of a child are terminated and the man's future parental responsibilities with respect to the child are terminated upon adoption of the child by other persons.

(3) The denial of paternity and notice shall not be valid for use by a legal father who is also a biological parent as defined in § 36-1-102(10).

(4) A denial of paternity and notice under this section may be executed at any time after conception of the child who is the subject of the denial, and may not be revoked by the father unless the adoption plan is abandoned. A father who executes a denial of paternity and notice under this section relinquishes any right to petition to have the father's legal or biological relationship to the child determined by a court.

(5) The denial of paternity and notice shall be legally sufficient if it contains a statement comparable to the following:

DENIAL OF PATERNITY AND NOTICE BY A LEGAL FATHER

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Pursuant to Tennessee Code Annotated § 36-1-111(x), and first being duly sworn according to law, affiant would state the following:

My name is \_\_\_\_\_. I am personally acquainted with \_\_\_\_\_, the biological mother of \_\_\_\_\_, a child [to be born], or a [child who was born] in \_\_\_\_\_(City) \_\_\_\_\_(State) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

I am or I have been told that I am or may be the presumed and/or legal father of the above-named child.

**I AM CERTAIN THAT I AM NOT THE BIOLOGICAL FATHER OF THIS CHILD.**

I understand that the mother has placed or wishes to place this child for adoption, or that the child is the subject of legal proceedings leading to the child's adoption, or leading to a determination of the child's legal custody or guardianship. I do not want custody of this child. I either agree with an adoption plan or I do not wish to be involved in the decision.

**I HEREBY WAIVE MY PARENTAL RIGHTS TO THIS CHILD, IF I HAVE ANY RIGHTS, AND I WANT MY PARENTAL RIGHTS, IF ANY, TO BE TERMINATED WITHOUT FURTHER ACTION BY, OR NOTICE TO, ME.**

I formally waive my rights to notice of legal proceedings regarding the child including: adoption, custody, guardianship, and termination of other parents' rights and any other similar actions.

I understand that by my execution of this Denial of Paternity and Notice, along with the finalization of the child's adoption, I will lose any right I may have to act as parent, to visit with, or otherwise be involved in this child's life. I also relinquish any right to petition to have my legal and biological relationship to this child determined by a court.

**I FURTHER UNDERSTAND THAT I MAY NOT REVOKE THIS DENIAL AT ANY TIME AFTER I SIGN IT.**

I also understand that while this denial is not revocable, it is not effective to terminate my parental rights or responsibilities unless or until an adoption of the child is finalized. If the

adoption is not finalized, I understand that I retain any rights that I otherwise had to rebut a presumption that I am the father of the child.

FURTHER AFFIANT SAITH NOT this \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

Legal Father (Please Print)

Signature of Legal Father

Address

City, State, Zip Code

Personally appeared before me the above-named \_\_\_\_\_, who is known to me and who acknowledged that he executed the above Denial of Paternity and Notice as his own free and voluntary act.

Notary Public \_\_\_\_\_ My commission expires:

SECTION 6. Tennessee Code Annotated, Section 36-1-112(a)(1)(A), is amended by adding the following sentence to the end of the subdivision:

The three-day period shall be calculated using the method for computation of time established in the Tennessee Rules of Civil Procedure Rule 6.01.

SECTION 7. Tennessee Code Annotated, Section 36-1-113(b)(1), is amended by deleting the language "having custody of the child" in the first sentence and substituting instead the language "having physical custody of the child".

SECTION 8. Tennessee Code Annotated, Section 36-1-113(g)(9)(A)(vi), is amended by deleting the phrase "by the child's mother" in its entirety.

SECTION 9. Tennessee Code Annotated, Section 36-1-113(g)(9)(B)(i), is amended by deleting the subdivision and substituting instead the following:

(i) For purposes of this subdivision (g)(9), "notice" means the written statement to a person who is believed to be the biological father or possible biological father of the child. The notice may be made or given by the mother, the department, a licensed child-placing agency, the prospective adoptive parents, a physical custodian of the child, or

the legal counsel of any of these people or entities; provided, that actual notice of alleged paternity may be proven to have been given to a person by any means and by any person or entity. The notice may be made or given at any time after the child is conceived and, if not sooner, may include actual notice of a petition to terminate the putative father's parental rights with respect to the child;

SECTION 10. Tennessee Code Annotated, Section 36-1-115(d), is amended by adding the following language to the end of the subsection:

However, nonresidents may also file a petition to adopt a child in this state if they file such petition in the county in which the court that granted the nonresidents partial or complete guardianship of the child is located.

SECTION 11. Tennessee Code Annotated, Section 36-1-116(a)(2), is amended by deleting the language "six (6) months" and substituting instead the language "one (1) year".

SECTION 12. Tennessee Code Annotated, Section 36-1-116(h), is amended by deleting the subsection and substituting instead the following:

(h) The filing of a petition for involuntary termination of parental rights with or without an adoption shall be deemed the commencement of a custody proceeding. A petition for adoption, with or without a voluntary termination of parental rights or consent, shall not be deemed the commencement of a custody proceeding for purposes of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), compiled in chapter 6, part 2, of this title.

SECTION 13. Tennessee Code Annotated, Section 36-1-117, is amended by adding the language "or (x)" after the language "§ 36-1-111(w)" in subsection (a), and by adding the following new subsection:

(o) The response or answer to a petition for termination of parental rights shall be signed by the respondent personally, sworn to and verified, and filed with the clerk of the court.

SECTION 14. Tennessee Code Annotated, Section 36-1-118, is amended by deleting the language "directly to prospective adoptive parents" in subsections (a) and (c) and substituting instead the language "directly to prospective adoptive parents or a licensed child-placing agency".

SECTION 15. Tennessee Code Annotated, Section 36-1-118(c)(2), is amended by deleting the language "the persons" and substituting instead the language "the persons or entity".

SECTION 16. Tennessee Code Annotated, Section 36-1-124, is amended by adding the following new subsection (d):

(d) Any notice of appeal filed in a termination of parental rights action shall be signed by the appellant.

SECTION 17. Tennessee Code Annotated, Section 36-1-123, is amended by redesignating the current language as subsection (a) and adding the following subsection:

(b) A restraining order or order of protection that restrains any person from contacting or otherwise interfering with a child and that is entered prior to the finalization of the adoption shall survive the adoption of the child unless such order is expressly set aside by the court that entered the order or the court hearing the adoption. Actions to enforce such order post-adoption may be brought in the court that issued the order or in the court hearing the adoption.

SECTION 18. Tennessee Code Annotated, Section 36-1-116(e), is amended by adding a new subdivision (6) as follows:

(6) Court filings in adoption actions by public or private agencies or parties, offered as proof of parentage, termination of parental rights, or related to establishment or termination of guardianship, may be reviewed by all parties to the case if the adoption court so orders. Such an order may be requested by motion of any party or by the agency that made the filing. A protective order may be granted as well upon showing,

by a preponderance of evidence, of good cause to restrict the information. The protective order shall be drawn as narrowly as possible while still offering the protections the court found to be warranted.

SECTION 19. Tennessee Code Annotated, Section 36-1-116(f)(2), is amended by adding the following to the end of the subdivision:

Actions suspended by this section, regardless of the stage of adjudication, shall not be heard until final adjudication of the action for termination of parental rights or adoption regarding the same child, even if such adjudication of the termination of parental rights or adoption will render the custody, guardianship, or visitation action moot.

SECTION 20. Tennessee Code Annotated, Section 36-1-113(g), is amended by adding a new subdivision (14) as follows:

(14) A legal parent or guardian has failed to manifest, by act or omission, an ability and willingness to personally assume legal and physical custody or financial responsibility of the child, and placing the child in the person's legal and physical custody would pose a risk of substantial harm to the physical or psychological welfare of the child;

SECTION 21. This act shall take effect July 1, 2016, the public welfare requiring it.